

The
SIMON
Companies

Community Planning &
Development Associates
Community Habitat, Inc.
Community Construction, Inc.
Fiduciary Investment Properties

April 23, 1996

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FCC MAIL ROOM

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

RE: Preemption of nongovernmental restrictions on Satellite Earth Stations, IB
Docket No. 95-59

Dear Mr. Caton:

We write in response to the FCC's Report and Order and Further Notice of Proposed Rulemaking released on March 11, 1996 regarding preemption of certain local regulation of satellite earth station antennas, and proposing to prohibit enforcement of nongovernmental restrictions on such antennas that are less than one meter in diameter (the "FNPRM"). We enclose six (6) copies of this letter in addition to this original.

THE SIMON COMPANIES has been in business for over 30 years as developers, property managers and investors in Real Estate. We own twenty-five (25) properties which comprise in excess of 3,000 apartment units and a 100,000 sq. ft. office building all in the states of Massachusetts, Rhode Island and New Hampshire.

PROPERTY RIGHTS

We are concerned that the proposed rule prohibiting enforcement of nongovernmental restrictions will adversely affect the conduct of our business without justification and needlessly raise additional legal issues. We question whether the Commission has the authority to require or to allow the physical invasion of our property in this way. It is imperative that we retain the authority to control the use of our property, for several reasons.

MARKETABILITY

The FNPRM incorrectly states that "nongovernmental restrictions would appear to be directed to aesthetic considerations." It is certainly true that aesthetic considerations play a part, but it is by no means the only concern. Nor are aesthetic considerations trivial -- the appearance of a building directly affects its marketability.

People generally prefer to live and work in attractive buildings, and the sight of hundreds of satellite antennas bolted to the outside of apartment units would not be appealing to present and future tenants. Thus, in the apartment market, aesthetic considerations are actually economic considerations.

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STRUCTURAL AND SAFETY CONDITIONS

The indiscriminate placement of antennas on the exterior of our buildings may also create structural hazards. For instance, the weight or wind resistance of an antenna installed improperly on a balcony railing may weaken the railing, thus creating maintenance problems and -- more importantly -- a hazard to the safety of tenants, building employees, and passers-by. Antennas mounted directly on a wall will require the drilling of holes, if improperly sealed, water seeping into the holes may create structural deficiencies. There are many mechanisms that could cause such damage, including expansion upon freezing, corrosion of metal mounting elements, seepage into the interior of a building, or weakening of concrete through chemical reaction with substances carried in by the water. All of these possibilities will create new maintenance and repair costs that we will have to pay, plus the safety hazards previously referred to.

TENANT FRUSTRATION

The technical limitations of satellite technology will create management problems because not all of our tenants may be able to receive certain services. When tenants on the south side of a building start subscribing to DBS, but tenants on the north side cannot because there is no place to position an antenna to receive the signal, we will have to deal with the complaints. We will be powerless to address the situation, but will suffer increased costs as angry tenants place additional demands on management or move to other buildings.

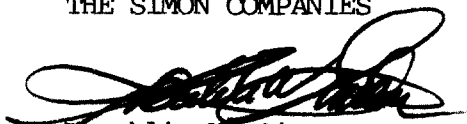
CONCLUSION

We believe that this pending rule is an intrusion on our property and freedom to protect our property rights. We urge the FCC to avoid interfering in our relationships with our tenants and avoid creating a situation which could cause damage to our property, its aesthetics and affect on diminishing its economic value. All of the potential problems we cited will affect our bottom line and our property rights.

Thank you for your attention to our concerns.

Very truly yours,

THE SIMON COMPANIES



Franklin W. Simon
President